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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE  
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12 J. MICHAEL CAPLOW,

13 Plaintiff,

14 v.

15 ZIMMER US, INC.; ZIMMER-BIOMET  
16 HOLDINGS, INC.; ZIMMER, INC.; and  
ZIMMER SURGICAL, INC.,

17 Defendants.  
18

No.: C18-1643 RSM

**STIPULATED PROTECTIVE ORDER**

19 The parties have stipulated to the entry of this Protective Order in regard to certain  
20 discovery material to be made available by Defendants Zimmer US, Inc., Zimmer Biomet  
21 Holdings, Inc., Zimmer, Inc., and Zimmer Surgical, Inc. (collectively, “Zimmer”) and by  
22 Plaintiff J. Michael Caplow (“Plaintiff”). This discovery material could include trade secrets  
23 and confidential, proprietary and non-public documents and information, the public disclosure  
24 of which could be detrimental to the interests of Zimmer and/or related corporate entities and/or  
25 documents which may contain information that is personal and confidential to third parties,  
26 including individuals. This discovery material could also include Plaintiff’s medical and

1 financial records. The parties agree that the above-described documents and information,  
2 including electronically stored information, should be given the protection of an order of this  
3 Court to prevent irreparable harm through disclosure to persons other than those persons  
4 involved in the prosecution or defense of this litigation. Those persons involved in this  
5 litigation include the parties, the attorneys for the parties, their staff, and the experts retained as  
6 consulting or testifying experts.

7 THEREFORE, FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED,  
8 ADJUDGED, and DECREED that the following Protective Order (“Order”) shall govern discovery  
9 in the above-captioned matter, as follows:

10 1. The following definitions shall apply to this Order:

11 (a) The term “document” means all written, recorded, electronically  
12 stored, or graphic material produced or created by a party or any other person,  
13 whether produced pursuant to the Federal Rules of Civil Procedure, subpoena, by  
14 agreement, or otherwise.

15 (b) A “stamped confidential document” means any document, including  
16 any document produced electronically, which bears the legend (or which shall  
17 otherwise have had the legend recorded upon it or upon the medium in which it is  
18 produced, in a way that brings its attention to a reasonable examiner)  
19 “CONFIDENTIAL” or “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER”  
20 to signify that it contains information subject to protection under Federal Rule of  
21 Civil Procedure 26(c)(1)(G), or federal or state statute or regulation. Interrogatory  
22 answers, responses to requests for admission, deposition transcripts and exhibits,  
23 pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials  
24 entitled to protection may be accorded status as stamped confidential documents, but,  
25 to the extent feasible and practical, these documents shall be prepared in such a  
26

manner that stamped confidential documents are bound separately from those not entitled to protection.

(c) The term “competitor” means any manufacturer or seller of medical devices, other than the named defendants, distributors of Zimmer products, or physicians implanting Zimmer products.

(d) The term “customer” means any direct purchaser of products from any defendant, or any regular indirect purchaser of defendants. The term “customer” is not meant to include the physicians, distributors, or sales reps involved in the action before this Court.

2. Stamped confidential documents and their contents, as well as copies, summaries, notes, memoranda and computer databases relating thereto, shall be and remain confidential. Stamped confidential documents shall not be disclosed in any fashion, nor be used for any purpose other than the analysis and preparation for discovery, motion practice, and/or the trial of this action, except with the prior written consent of the party or other person originally designating a document as a stamped confidential document, or as hereinafter provided under this Order.

3. Notwithstanding paragraph 2, stamped confidential documents may be disclosed to the parties to this action; counsel of record for the parties to this action; the partners, associates, secretaries, paralegal assistants, and employees of counsel of record to the extent reasonably necessary to render professional services in the litigation; and to court officials involved in this litigation (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court). Such documents may also be disclosed:

(a) to any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper; and

1 (b) to persons noticed for depositions or designated as trial witnesses to  
2 the extent reasonably necessary in preparing to testify; and to outside consultants or  
3 experts retained for the purpose of assisting counsel in the litigation, so long as such  
4 persons are neither Zimmer's current competitors, current employees for Zimmer  
5 competitors, nor customers of Zimmer. Each person to whom disclosure is made  
6 pursuant to this paragraph must sign a Confidentiality Agreement, the form of which  
7 is attached hereto as Exhibit A. That Agreement shall then be returned to counsel  
8 who shall retain any such Agreements during the pendency of the litigation.

9 (c) If a party wishes to disclose stamped confidential documents to any  
10 person listed in subparagraph 3(a) or 3(b) who is a customer or competitor of the  
11 party that so designated the document, the party wishing to make disclosure shall  
12 give at least 15 days advance notice in writing to the counsel who designated such  
13 information as confidential, stating the names and addresses of the person(s) to  
14 whom the disclosure will be made, identifying with particularity the documents to be  
15 disclosed, and stating the purpose of such disclosure. If, within the 15-day period, a  
16 motion is filed objecting to the proposed disclosure, the disclosure shall not be made  
17 unless and until the Court has denied such motion.

18 4. Each person executing the Confidentiality Agreement submits to the  
19 jurisdiction of this Court for the purposes of enforcement of this Order, either prior to or following  
20 the completion of this action. Jurisdiction of this action is to be retained by this Court after final  
21 determination for purposes of enabling any party or persons affected by this Order to apply to the  
22 Court at any time for such direction or further decree as may be appropriate for the construction or  
23 enforcement of this Order or for such additional relief as may become appropriate.

24 5. Nothing in this Order shall preclude the disclosure by a party of stamped  
25 confidential documents that it has produced.  
26

1                   6.       Nothing in this Order shall preclude the disclosure by any party of publicly  
2 available documents or information.

3                   7.       Stamped confidential documents included as part of any pleading or  
4 memorandum shall be filed in accordance with the Local Rules, and any procedures and/or orders  
5 issued by the Court.

6                   8.       Persons with knowledge, including persons affiliated with Zimmer,  
7 physicians, distributors, and experts, may be deposed regarding stamped confidential documents or  
8 the subject matter thereof. Only the parties and persons described in paragraph 3, including the  
9 court reporter and the witness, shall be present at such depositions. Portions of transcripts of said  
10 depositions shall be treated as stamped confidential documents in accordance with this Order, if a  
11 party seeks to designate them as confidential.

12                  9.       If, at the time of trial, counsel for any of the parties attempts to introduce into  
13 evidence or use in cross-examination any stamped confidential documents, whether as part of a  
14 document or deposition testimony, counsel for either party may request the Court to preserve the  
15 confidentiality of that stamped confidential document as the Court deems appropriate.

16                  10.      In the event that another party disagrees with a party's designation of any  
17 document or information as confidential, the objecting party shall advise counsel for the designating  
18 party, in writing, of the objection and identify the document or item with sufficient specificity to  
19 permit identification. Within 10 days of receiving the objection, the designating party shall advise  
20 the objecting party's counsel whether the designating party will change the designation of the  
21 document or item. If this cannot be resolved between the parties, then the dispute will be presented  
22 to the Court by motion or otherwise. During the pendency of any such motion, the designated  
23 document or item shall continue to be treated as a stamped confidential document and subject to the  
24 provisions of this Order. On the hearing of any such motion, the burden shall be on the designating  
25 party to establish that the designated document or item should be deemed confidential.

1                   11.     If another court or an administrative agency subpoenas or orders production  
2 of stamped confidential documents which a party has obtained under the terms of this Order, such  
3 party shall promptly notify the party or other person who designated the document as confidential of  
4 such subpoena, order or other legal process.

5                   12.     If a producing party inadvertently or unintentionally produces to a receiving  
6 party any document or information without marking it as a stamped confidential document pursuant  
7 to paragraph 1, the producing party shall, within 30 days of the discovery of the inadvertent  
8 production, give notice to the receiving party in writing and thereafter the receiving party shall treat  
9 the document as a stamped confidential document. Such inadvertent or unintentional disclosure  
10 shall not be deemed a waiver in whole or in part of the producing party's claim of restriction either  
11 as to specific documents and information disclosed or on the same or related subject matter.

12                   13.     If a producing party inadvertently or unintentionally produces to a receiving  
13 party any document or information subject to a claim of privilege or immunity from discovery  
14 (including but not limited to attorney-client privilege, work product immunity, and immunities  
15 created by federal or state statute or regulation), the producing party shall, within 30 days of the  
16 discovery of the inadvertent production, give notice to the receiving party in writing of the  
17 producing party's claim of privilege or immunity from discovery. Thereafter, the receiving party  
18 shall immediately return to the producing party the original and all copies of the restricted materials,  
19 including copies of the restricted materials disseminated to other persons by the receiving party.  
20 The receiving party will be deemed to have notice that material is restricted if the party reasonably  
21 should recognize the material is privileged or protected from discovery, or upon written notice by  
22 the producing party. Such inadvertent or unintentional disclosure shall not be deemed a waiver in  
23 whole or in part of the producing party's claim of privilege or immunity from discovery either as to  
24 specific documents and information disclosed or on the same or related subject matter. In the event  
25 that the receiving party disagrees with the producing party's claim of privilege or immunity from  
26 discovery, then the receiving party shall notify the producing party within five (5) business days of

1 receipt of the producing party's written notice of claim of privilege, and shall set forth the precise  
2 grounds upon which the receiving party's position rests. If the parties cannot resolve the matter,  
3 then the dispute will be presented to the Court by motion or otherwise. During the pendency of any  
4 such motion, the receiving party shall not copy, distribute, or otherwise use in any manner the  
5 disputed documents or information, and shall instruct all persons to whom the receiving party has  
6 disseminated a copy of the documents or information that the documents or information are subject  
7 to this Order and may not be copied, distributed, or otherwise used pending the motion and further  
8 notice from the Court.

9           14. The provisions of this Order shall not terminate at the conclusion of this  
10 lawsuit. At the request of any Party to this lawsuit, within 90 days after final conclusion of all  
11 aspects of this litigation including appeals, stamped confidential documents and all copies of same  
12 (other than exhibits of record) either shall be destroyed or returned to the producing party. In the  
13 event that stamped confidential documents are produced in electronic form, or are put into  
14 electronic form by the receiving party, then the receiving party, having received a request from any  
15 other Party, shall delete all electronic copies of stamped confidential documents from all computer  
16 systems, disks, and other electronic medium and devices. All counsel of record having received  
17 such a request shall make certification of compliance herewith and shall deliver the same to counsel  
18 for the party who produced the documents not more than 120 days after final termination of this  
19 litigation.

20           15. The attorneys of record are responsible for employing reasonable measures to  
21 control and record, consistent with this Order, duplication of, access to, and distribution of stamped  
22 confidential documents, including abstracts and summaries thereof. No duplications of stamped  
23 confidential documents shall be made except by counsel to provide working copies and for filing in  
24 Court under seal pursuant to paragraph 7.

25           16. The Clerk may return to counsel or destroy any stamped confidential  
26 documents in its possession.

1 17. It is expressly understood by and between the parties that in granting access  
2 to or producing stamped confidential documents in this litigation, the producing party shall be  
3 relying upon the terms and conditions of this Order.

4 For Plaintiff:

5 /s/ Alex C. Davis  
6 Alex C. Davis (*pro hac vice*)  
7 JONES WARD PLC  
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Date: July 16, 2019

12 For Plaintiff:

13 /s/ Steven P. Caplow  
14 Steven P. Caplow, WSBA #19843  
15 DAVIS WRIGHT TREMAINE LLP  
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18 Telephone: (206) 757-8018  
19 E-mail: stevenaplow@dwt.com

Date: July 16, 2019

20 For Defendants:

21 /s/ Evelyn E. Winters  
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Date: July 16, 2019

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5 **ORDER**

6 The Court has reviewed the reasons offered in support of entry of a Stipulated Protective  
7 Order and finds that there is good cause to protect the confidential nature of certain information  
8 as requested. Accordingly, the Court adopts the Stipulated Protective Order in this action.

9 DATED this 17<sup>th</sup> day of July 2019.

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11 RICARDO S. MARTINEZ  
12 CHIEF UNITED STATES DISTRICT JUDGE  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

J. MICHAEL CAPLOW,

Plaintiff,

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ZIMMER US, INC.; ZIMMER-BIOMET  
HOLDINGS, INC.; ZIMMER, INC.; and  
ZIMMER SURGICAL, INC.,

Defendants.

No.: 18-cv-01643-RSM

EXHIBIT A TO STIPULATED  
PROTECTIVE ORDER

1. I acknowledge that I am about to receive confidential information supplied by

\_\_\_\_\_.

2. I have read the Protective Order governing the restricted use of confidential information in this litigation, a copy of which order has been provided to me. I understand the Protective Order and agree to abide by it.

3. I will not utilize any stamped confidential document or other information subject to the Protective Order for any purpose other than this litigation. I further affirm that I will not reveal

1 the confidential information to, nor discuss it with, anyone, except in accordance with the terms of  
2 the Protective Order.

3 4. I understand unauthorized disclosures of stamped confidential documents or their  
4 substance constitute contempt of court.

5 5. At the termination of this litigation, I will return all documents marked  
6 "CONFIDENTIAL," or "CONFIDENTIAL –SUBJECT TO PROTECTIVE ORDER," as well as  
7 any copies, summaries or abstracts of them, and documents related to them, whether in hard copy,  
8 electronic, or digitized format, to the attorney providing confidential materials to me.

9 6. I submit to the jurisdiction of the United States District Court for the Eastern District  
10 of Missouri as necessary to enforce the provisions of this Protective Order.

11 Dated: \_\_\_\_\_

12 \_\_\_\_\_  
Signature

13 \_\_\_\_\_  
14 Printed Name

15 \_\_\_\_\_  
16 Address

17 \_\_\_\_\_  
18 City, State, Zip

19 \_\_\_\_\_  
Telephone Number